

DOCKET NO: UWYCV156050025S

SUPERIOR COURT

SOTO, DONNA L., ADM OF THE ESTATE
OF VICTORIA L. S Et AlJUDICIAL DISTRICT OF WATERBURY
AT WATERBURY

V.

BUSHMASTER FIREARMS
INTERNATIONAL, LLC AKA FREEDOM Et
Al

2/20/2020

ORDERORDER REGARDING:
02/18/2020 280.00 MOTION FOR ORDER

The foregoing, having been considered by the Court, is hereby:

ORDER:

The Remington defendants are asking the court to order the release of Adam Lanza's psychological, psychiatric, medical, and educational records, and the plaintiffs agree that discovery of the records is appropriate and justified. Highly protective state and federal statutes govern the release of such records. The court notes that overall, the psychological, psychiatric, and medical records fall within the purview of the Health Insurance Portability and Accountability Act (HIPAA), a 1996 federal law that extends patients' privacy rights into death. With respect to psychological records, Conn.Gen.Stat. §52-146c protects confidential communications between a patient and psychologist. Where, as here, the patient is deceased, the statute allows his "personal representative or next of kin" to consent, in writing, to the disclosure of the records. No such consent has been provided here. In the absence of such consent, the statute allows for some narrow, limited exceptions, whereby the court can order disclosure of the records. The Remington defendants argue that the exception at 52-146c(c)(2) applies. The court is not persuaded. 52-146c(c)(2) provides an exception, where consent is not required, as follows: "(I)f, in a civil proceeding, a person introduces his psychological condition as an element of his claim or defense, or, after a person's death, his condition is introduced BY A PARTY CLAIMING OR DEFENDING THROUGH OR AS A BENEFICIARY OF THE PERSON, and the judge finds that it is more important to the interests of justice that the communications be disclosed than that the relationship between the person and psychologist be protected." (emphasis added). Here, neither Lanza nor his estate are parties to this action, and as such, have not advanced any claim or defense related to Lanza's psychological condition. Therefore, the first prong of the limited statutory exception has not been met, and the court cannot simply decide the issue on the second prong of the statute, i.e., whether it would be in the "interests of justice" to order the release of the records. The court is limited to the express exceptions that the legislature has seen fit to enact, and has no discretion to rule otherwise, despite the fact that the records might be helpful to a party's case, or that there might be public interest in the records. The same analysis applies to psychiatric records, as the statutes relating to the disclosure of psychiatric records, see Conn.Gen.Stat. §52-146d(1), 52-146f(5), employ virtually the identical language as the statutes governing the disclosure of psychological records. "(A) trial court cannot exercise its discretion to override the psychiatrist-patient privilege where the court discerned compelling countervailing interests not explicitly delineated in the narrowly limited exceptions to nondisclosure contained in General Statutes Section 52-146f. It is just as clear that no exception is available beyond those contained in Section 52-146f." In re Jacklyn H., 162 Conn.App. 811, 825 (2016) (citations omitted; internal quotations omitted). With respect to other, non-mental health medical records, HIPAA and Conn.Gen. Stat. §52-146o protects against the disclosure of medical records in civil actions without the explicit consent of the patient or the patient's authorized representative. 52-146o(b) sets forth the limited exceptions whereby consent is not required. Both state and federal law provide that consent is not required in civil actions when disclosure is ordered by the court. 45 C.F.R. 164.512(e)(1)(i); 52-146o.

Although the Remington defendants posit that Lanza's medical records could possibly bear on causation it does not automatically translate that Lanza's non-mental health medical records, even upon his death, should become public property by virtue of this lawsuit. Finally, with respect to Lanza's educational records, the court looks to both state and federal laws. While Connecticut statutes specifically address the confidentiality of psychiatric, psychological, and medical records, there are no similar Connecticut statutes relating to the confidentiality of educational records. Instead, as the Remington defendants point out, Connecticut law has adopted federal standards with respect to the disclosure of educational records. Generally, where there is no specific written consent for the release of educational records, the Family Educational Rights and Privacy Act(FERPA)allows for the release of records, upon notification to the parents and student, pursuant to a court order or lawfully issued subpoena. 20 U.S.C.1232g(b)(2). With respect to court orders, the court acts as a gatekeeper and balances the equities weighing in favor and against the disclosure. E.g. *Ragusa v Malverne Union Free School District*, 549 F.Supp.288,292 (E.D.N.Y. 2002). However, it does not appear that FERPA protects the educational records of a deceased former student who is over 18 years of age, such as Lanza. Here,the Remington defendants seek discovery of Lanza's educational records in order to gain information regarding Lanza's "mental condition" and "mental health and state of mind" and argue that any privacy interest is outweighed by the "immense publicity surrounding his crimes" and the needs of the defendants to "seek the truth." The defendants may subpoena to court the educational records at issue thus giving the school or schools notice and an opportunity to be heard, with the court conducting an in camera review if necessary.

421277

Judge: BARBARA N BELLIS

This document may be signed or verified electronically and has the same validity and status as a document with a physical (pen-to-paper) signature. For more information, see Section I.E. of the *State of Connecticut Superior Court E-Services Procedures and Technical Standards* (<https://jud.ct.gov/external/super/E-Services/e-standards.pdf>), section 51-193c of the Connecticut General Statutes and Connecticut Practice Book Section 4-4.